

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 87/2007

Appeal
Application No.
 Writ petition

District :
 of 200

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders.

Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : April 13, 2007.

Shri Anil Gedam appeared on behalf of Shri O.D. Kakde, the learned counsel for the appellant, and requested that the matter be taken up in the next week. Similar prayer was made on behalf of the appellant by Shri Gedam when the matter was called by this Court on 23/3/2007, 30/3/2007 and 6/4/2007. This Court had specifically made it clear to Shri Gedam that the matter would not be adjourned any longer. This matter was adjourned from time to time at the request made on behalf of Shri O.D. Kakde. On 6/4/2007, it was informed by the counsel for the respondent that the matter was being adjourned so as to avoid the execution of the decree. This Court had, therefore, informed Shri Gedam that the matter would be disposed of on the next date. In spite of the aforesaid

position, a similar request is made before this Court today also. But, the same is rejected.

I have perused the judgment passed by the trial and the appellate Courts. The appellant is the original defendant. A suit was filed by the plaintiff for specific performance of contract of sale of the suit property. The defendant resisted the claim of the plaintiff and pleaded that the transaction was a loan transaction and the Issar Chitthi was executed for collateral purpose. The defendant had denied the receipt of earnest amount of Rs. 15,000/- and further denied that there was any agreement for sale of suit land, between the parties.

After appreciation of the material evidence on record, the trial Court held that the plaintiff had proved that the defendant agreed to sell the suit land to the plaintiff and that the defendant had received an earnest amount of Rs. 15,000/-. The Court further held that the plaintiff was ever ready and willing to perform his part of the contract. The Court then recorded a finding that the defendant failed to prove that the Issar Chitthi was executed towards the security for repayment of the loan. The trial Court did not consider the issue as to whether the plaintiff

was an agriculturist or not, though the said issue is mentioned in paragraph no.8 of the trial Court's judgment, as the issue was deleted by the order dated 3/4/2003 passed by the trial Court on a pursis Exh.101 moved by the defendant stating therein that the defendant was not desirous to press the said issue. The trial Court, after recording the findings on the issues framed, granted a decree for specific performance in favour of the plaintiff. The appeal filed by the defendant against the judgment and decree passed by the trial Court was also dismissed by the appellate Court by the judgment dated 1/8/2006.

It appears from the judgment passed by the trial Court that the trial Court exercised its discretion in granting the relief of specific performance of contract, by adhering to the provisions of law laid down by the Courts from time to time. The discretion exercised by the trial Court was rightly not interfered with by the appellate Court.

Even otherwise, the memorandum of appeal does not state any question of law which is a substantial question of law. The first question raised on page 2 of the memorandum of second appeal states that

the plaintiff was not an agriculturist and the transaction was hit by provisions of Bombay Tenancy and Agricultural Lands Act. However, as pointed out herein above, though the aforesaid issue was framed, it was deleted by an order passed by the trial Court on 3/4/2003 on the basis of a pursis filed by the defendant.

Since no substantial question of law arises for consideration in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP